

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 :
 :
OMONDI COOK : NO. 04-414

MEMORANDUM AND ORDER

McLaughlin, J.

June 22, 2005

The defendant is charged with possession with intent to distribute cocaine and crack cocaine, possession of a firearm in furtherance of a drug trafficking crime, and possession of a firearm after a prior conviction. The drugs and firearm were allegedly recovered by the police from the defendant's car and person after the police received information from a confidential source. The defendant has moved to suppress the evidence and to compel disclosure of the identity of the confidential source. The Court held an evidentiary hearing on May 20 and May 23, 2005, and will now deny the motion.

I. Findings of Fact

A. Facts Concerning the Confidential Source

Sometime after 4:00 P.M. on March 10, 2004, an individual approached Officer Sean Kelly and told him that he/she had been a confidential informant for Officer Graziano Iezzi and wished to reactivate his/her confidential informant status with

the Philadelphia Police Department. Officer Kelly was not familiar with this individual and had not spoken to this individual prior to March 10. Officer Kelly told the person that he/she would have to provide some information to show his/her good faith before Officer Kelly would seek to have him/her reactivated as a confidential informant.

This person told Officer Kelly that he/she knew a black male named Omondi who lived with his grandmother at 1414 South 31st Street in Philadelphia, Pennsylvania. This person told Officer Kelly that Omondi sold large quantities of hard and soft weight, which Officer Kelly understood to mean crack cocaine and powder cocaine. The person told Officer Kelly that Omondi sold drugs from in front of his grandmother's house and used a cellular phone to arrange deals. The source gave Officer Kelly a telephone number for Omondi's cellular phone. The source also told Officer Kelly that Omondi was known to carry a gun and that Omondi was dangerous.

The confidential source described three cars that Omondi used to deliver narcotics: a dark colored Ford Mustang; a dark colored Pontiac Bonneville; and a light colored or white Chevy Impala. The person told Officer Kelly that the Mustang and Bonneville each had a Pennsylvania tag. The person told Officer Kelly either that the Chevy Impala had out of state tags or that the Chevy Impala had Texas tags.

This person told Officer Kelly that Omondi was going to deliver a quantity of crack cocaine to a black male who went by the name "Fuzz" in the area of 1430 South 32nd Street at approximately 8:15 that evening. The person told Officer Kelly that Omondi would be driving the Chevy Impala and would be carrying a dark colored gun.

Officer Kelly drove the person to the 1400 block of South 31st Street to look for the cars that the person had described. The person identified the Mustang and Bonneville, both of which were parked on the east side of the street across from 1414 South 31st Street. Officer Kelly was unable to recall if the Impala was parked on the street at that time.

After running a check of the license tags, Officer Kelly discovered that the Mustang was registered to a Renee Cook and the Bonneville was registered to a Danaria Cook, both at 1414 South 31st Street. Officer Kelly also checked the real estate records for the residence at 1414 South 31st Street and discovered that the property was registered to somebody named Cook. Officer Kelly could not recall if he checked the real estate records prior to Mr. Cook's arrest.

At some point either before or after Mr. Cook's arrest, Officer Kelly determined that the Chevy Impala was registered to Alamo Car Rental. Mr. Cook rented the car from Alamo at the Philadelphia airport around 4:00 P.M. on March 8.

The confidential source stayed with Officer Kelly on March 10 from the time that he/she first approached Officer Kelly at approximately 4:00 P.M. until after Mr. Cook's arrest around 8:20 P.M. Officer Kelly's partner, Officer James Crandley, was also present throughout this time.

Some time prior to March 10, an anonymous person called the Philadelphia Police Department to report that an individual named Omondi was selling weight in the area of 31st and Dickinson Streets; that Omondi had a white car with out of state tags or Texas tags; that Omondi was a very dangerous person; and that a lot of people were scared of Omondi. Officer Kelly testified that this person called approximately two to three days prior to March 10; however, Officer Kelly was not sure what day the call came in. Officer Kelly did not speak to the person and did not conduct any investigation following the call. Officer Kelly saw a description of the call on a complaint form in the police department.

Officer Kelly talked to Officer Deitz on March 10 prior to Mr. Cook's arrest about the reliability of the confidential source. Officer Deitz told Officer Kelly that Officer Iezzi had used the source in the past and that the source had proven to be very trustworthy and reliable. Other than stating that the source was reliable, Officer Deitz did not give Officer Kelly any specific details or facts about the source's reliability.

Officer Kelly also talked with Officer Iezzi about the confidential source, but Officer Kelly could not recall if this conversation took place before or after Mr. Cook's arrest. Officer Iezzi told Officer Kelly that the source was very reliable and gave Officer Kelly permission to work with the source.

Officer Iezzi had used the individual as a confidential informant for two investigations in 2000. Prior to these investigations, Officer Iezzi performed a background check on the individual and had the individual registered as a confidential informant.

The first investigation started on May 25, 2000, and concluded on May 31, 2000. During this investigation the confidential informant made two or three controlled purchases of narcotics from a suspect while under police surveillance. Following the controlled purchases, the police were able to obtain a search warrant for the property where the sales took place. During execution of the warrant, the police recovered multiple weapons, quantities of cocaine and marijuana, cash, and drug paraphernalia. The police arrested two individuals. The main target of the investigation plead guilty and was sentenced to 60 months incarceration. The second individual was not prosecuted.

The second investigation started on May 30, 2000, and ended on June 1, 2000. The confidential informant told Officer Iezzi that he/she could make a controlled purchase from a certain individual who was involved in the sale of powder cocaine. As a result of that controlled purchase, the police obtained a search warrant for the property where the sale took place. When the police executed the warrant, they recovered cash, illegal narcotics, a stolen gun, and ammunition. The police made one arrest. That individual plead guilty and was sentenced to approximately two years incarceration.

The Court held an in camera conference with Officer Kelly. The Assistant United States Attorney, Nancy Potts, and Detective Frank Kerrigan were also present. The Court asked Officer Kelly questions to learn whether the confidential source had given Officer Kelly any basis to think that the confidential source possessed personal knowledge of the information he/she gave about the person named Omondi. The Court concludes that the confidential source did give Officer Kelly reason to believe that the source had personal knowledge of the facts he/she told Officer Kelly. The Court also concludes that disclosure of that basis of knowledge could lead to disclosure of the confidential source's identity. For that reason, the Court decided that this information should not be disclosed to the defendant.

B. Facts Concerning the Investigatory Stop and Subsequent Arrest of the Defendant

Acting on the information he received from the confidential source, Officer Kelly set up surveillance in the area of 1400 South 32nd Street with other members of the Narcotics Field Unit South Division around 8:10 P.M. on March 10, 2004. Officer Kelly was parked in an unmarked police car at the northwest corner of Reed and 32nd Streets facing south toward 32nd Street. The confidential source was lying down in the back seat of Officer Kelly's car because he/she was scared of Mr. Cook and did not want to be seen. Officers Deitz and Bogan and Corporal Vassor were in a second unmarked police car at the northeast corner of the same intersection. Sergeant Meehan and Officers Francis and Nixon were in a third unmarked police car at the southeast corner of the intersection.

Officer Kelly told the other officers that he had information that a male would be coming to the area to deliver a large quantity of narcotics and that the individual might be armed. Officer Kelly pre-arranged with the other officers for them to stop the car to investigate after the source identified the vehicle and driver.

At approximately 8:20 P.M., Officer Kelly saw a white Chevy Impala with Texas tags enter the 1400 block of South 32nd Street. Officer Kelly drove past the Impala after he saw it park and heard a horn honk. Officer Kelly heard the horn honk two

more times as he was driving down the block. The confidential source sat up to look out the window as Officer Kelly drove past the Impala. The source identified the vehicle and the person in the driver's seat as Omondi. Officer Kelly radioed the back-up officers after the source made the identification. Officer Kelly continued down the street and parked his car near the end of the block, approximately 100 to 125 feet away from the Impala.

Some of the facts as to what happened next are in dispute. The government and the defendant each put on witnesses. The government presented Officers Kelly and Bogan and Sergeant Meehan.¹ The defendant presented Officer Billips and the defendant.

1. Undisputed Facts

There is no dispute among the witnesses with respect to the following facts. At approximately 8:20 P.M., Mr. Cook, while driving a white Chevy Impala, entered the 1400 block of South 32nd Street and parked on the west side of the street alongside a public swimming pool that was across from 1429 South 32nd Street. Mr. Cook had either on his person or in the car a loaded .357 handgun and quantities of powder cocaine and crack cocaine.

¹ The government also presented testimony by Officer Iezzi relating to the confidential source.

The narcotics were packaged in two different clear plastic baggies. The first baggie contained six clear baggies, each of which contained crack cocaine. The second baggie contained three clear baggies, each of which contained powder cocaine, and fourteen clear baggies, each of which contained crack cocaine.

Mr. Cook was present at that location because he intended to sell an ounce and a half of crack cocaine to a certain individual in the area. Mr. Cook intended to sell the crack cocaine packaged in the clear plastic baggie that contained six smaller baggies.

After Mr. Cook parked the car, at least five officers approached the Chevy Impala: Sergeant Meehan, Corporal Vassor, and Officers Billips, Deitz, and Bogan. Officer Deitz opened the driver's side door, pulled Mr. Cook out of the car, and placed handcuffs on him. The police recovered the gun and drugs described above.

What is in dispute is what happened in those few seconds between the time the officers approached the car and the time Officer Deitz pulled Mr. Cook out of the car.

2. Government's Version of Facts

a. Officer Bogan's Testimony

Officer Bogan testified as follows. After Officer Kelly radioed that the car had arrived, Officer Bogan entered the 1400 block of South 32nd Street and parked in the traffic lane to the rear of the Chevy Impala. Officers Bogan and Deitz and Corporal Vasser got out of their car, announced themselves as police officers, and moved toward the driver's side of the Chevy Impala on foot. Officer Bogan shined his flashlight in the direction of Mr. Cook's car and saw Mr. Cook moving around and hunching his shoulders down like he was digging in his waistband. Officer Bogan repeatedly ordered Mr. Cook to stop moving and keep his hands up, but Mr. Cook did not comply with the orders.

Officer Deitz opened the driver's door of the Impala, and Officers Bogan and Deitz physically removed Mr. Cook from the car. The officers repeatedly ordered Mr. Cook to stop moving his hands, but Mr. Cook continued moving his hands toward the right side of his body. Officers Bogan and Deitz placed Mr. Cook on the ground, forcibly pulled Mr. Cook's hands behind his back, and placed Mr. Cook in handcuffs. Officer Bogan then saw Officer Deitz remove a .357 handgun from Mr. Cook's right side waistband area and clear one round from the chamber.

After Officer Deitz removed the gun from Mr. Cook's waistband, Officer Bogan saw Officer Billips reach into the car

from the driver's side door, which was still open, and remove the clear baggie that contained six smaller baggies with crack cocaine. Officer Bogan saw Officer Billips recover the baggies from the floor of the car where the driver's left foot would be. Officer Bogan then saw Sergeant Meehan reach into the driver's side door and come out with the clear baggie that contained three baggies with powder cocaine and fourteen baggies with crack cocaine.

Officers Bogan and Deitz searched Mr. Cook before placing him in the police vehicle and confiscated \$2,264 in cash, three cellular phones, and several forms of identification from Mr. Cook's person. Officer Bogan never drew his weapon, and he did not notice if any other officers drew their weapons.

b. Sergeant Meehan's Testimony

Sergeant Meehan testified as follows. After Officer Kelly radioed that the vehicle had arrived, Sergeant Meehan entered the 1400 block of South 32nd Street and parked directly behind the Impala. As Sergeant Meehan approached the Impala on the passenger side, he shined his flashlight into the car and saw Mr. Cook drop his hands. Sergeant Meehan yelled out, "Watch his hands. He's dropping his hands. Watch his hands." Sergeant Meehan then drew his weapon.

Sergeant Meehan ran around the front of the car to the driver's side. As he was running around the car, Sergeant Meehan saw Mr. Cook struggling with the officers and heard the officers yelling "gun gun." Sergeant Meehan saw Officer Deitz recover the gun from Mr. Cook's waistband after he arrived at the driver's side.

After Officer Deitz recovered the gun, Sergeant Meehan looked into the vehicle and saw a clear plastic baggie on the driver's seat next to the arm rest. Sergeant Meehan was standing in the street between the open driver's door and the side of the car when he saw the baggie. As Sergeant Meehan was reaching into the car to remove the baggie, he saw a City Blue shopping bag on the rear seat containing an object that he recognized to be a kilo wrapper.

3. Issues Regarding Officer Billips' Testimony

The defendant called Officer Billips to testify at the suppression hearing to try to cast doubt on the government's version of the facts. The defendant contends that Officer Billips' testimony at the suppression hearing contradicts not only the testimony of other officers but also his own testimony at the defendant's preliminary hearing held in the Court of Common Pleas for Philadelphia County on March 22, 2004. The government did not present the testimony of Officer Billips and

does not rely on it for purposes of this motion. The Court, therefore, will consider Officer Billips' testimony only to the extent that it undercuts the testimony of the other police officers.

Officer Billips testified as follows. Prior to the other officers arriving at the scene, Officer Billips walked by the passenger side of Mr. Cook's car and looked in the window. Officer Billips walked by the car after he heard the horn honk three times. Officer Billips saw a clear bag with what appeared to be chunks of cocaine base sitting on Mr. Cook's lap, as well as a City Blue bag on the back seat of the car. The City Blue bag was closed, and Officer Billips could not see inside it. Officer Billips called Officer Kelly on his Nextel phone and told Officer Kelly that he saw the drugs on Mr. Cook's lap and that the back up officers should move in to arrest Mr. Cook. Officer Billips could not recall if he received a response from Officer Kelly, but the other officers arrived at the scene almost immediately after he called Officer Kelly.

After the other officers arrived at the scene, Officer Billips walked around the rear of the car and followed Officer Deitz to the driver's side. Officer Billips saw Mr. Cook move his right hand after Officer Deitz opened the door and started to take Mr. Cook out of the car. Officer Billips could not tell if Mr. Cook was reaching for anything. Officer Billips could not

see if Mr. Cook was moving while Mr. Cook was still in the car because Officer Deitz was blocking his view.

Officer Billips saw Officer Deitz recover a gun from Mr. Cook's person. After Officer Deitz recovered the gun, Officer Billips saw a bag containing what he believed to be cocaine base on the floor of the car where the driver's foot would be. Officer Billips also recovered the money from inside Mr. Cook's car.

The Court finds that Officer Billips' testimony contradicted the testimony of the other officers in three respects. Officer Billips testified that the City Blue bag was closed, that Officer Crandley recovered the City Blue bag from the back seat, not Sergeant Meehan, and that he recovered the cash from inside the vehicle, not from Mr. Cook's person. As the Court will discuss further below, these inconsistencies are not legally significant.

The defendant asked Officer Billips several questions about calling Officer Kelly on his Nextel phone. The Court infers that these questions related to the defense argument that the police conducted an arrest of the defendant, not a Terry stop.

Officer Kelly did not testify about receiving a call from Officer Billips, but even if Officer Kelly did receive such a call, there is no evidence to suggest that any of the officers

who initially approached Mr. Cook's car knew about the call. Officer Billips testified that only people with Officer Kelly could have heard the call because he used the Nextel phone, not the police radio. Further, Officer Billips testified that he walked by Mr. Cook's car after the third horn honk, but Officer Kelly testified that he radioed the back up officers before the third honk. Therefore, this testimony does not undercut the government's position that the officers approached Mr. Cook's vehicle to conduct an investigatory stop as they had pre-arranged with Officer Kelly prior to setting up surveillance.

According to the defendant, Officer Billips' testimony at the suppression hearing contradicted his own testimony at the preliminary hearing in two ways. First, Officer Billips testified at the preliminary hearing that he looked in the driver's side of Mr. Cook's car as he walked on the west side of the car. Based on the photographs and map introduced into evidence by the government, the Court finds that the west side of the car would have been the passenger side. The Court finds this testimony consistent with Officer Billips' testimony at the suppression hearing; however, even if Officer Billips did testify at the preliminary hearing that he walked by the driver's side of Mr. Cook's car, the Court finds that this testimony is not relevant to the present motion because it involves a minor fact

and the government is not relying on Officer Billips' testimony to justify the investigatory stop.

Second, the transcript from the preliminary hearing reflects that Officer Billips said he was behind Officer Deitz on the passenger side of Mr. Cook's car after the back up officers arrived. This testimony is clarified in the very next line of the preliminary hearing transcript when Officer Billips states that he followed Officer Deitz to the driver's side and that some other officers were on the passenger side. The Court notes that the preliminary hearing transcript consistently indicates that Officer Billips testified that he was behind Officer Deitz, and there is no dispute that Officer Deitz approached the defendant's car from the driver's side. The Court finds this testimony is consistent with Officer Billips' testimony at the suppression hearing.

The Court finds, therefore, that any inconsistencies between Officer Billips' current testimony and his testimony at the preliminary hearing do not cast doubt on the testimony or credibility of the other officers. The Court finds that most of the inconsistencies may be reconciled and the remaining inconsistencies do not involve material facts for purposes of this motion.

4. Defendant's Version of Facts

Mr. Cook testified as follows. After parking his car, Mr. Cook beeped the horn once and waited for "Fatty" to come out. Mr. Cook intended to sell an ounce and a half of crack cocaine to "Fatty." Mr. Cook had the gun and drugs in the center console of the Impala. Mr. Cook did not take the drugs out of the center console because "Fatty" did not come out to meet him. The drugs that Mr. Cook intended to sell to "Fatty" were in the baggie that contained six smaller baggies with crack cocaine. Mr. Cook also had a kilo wrapper in a City Blue shopping bag on the back seat of the car, but the bag was closed.

As Mr. Cook was sitting there, a car drove up and parked in the traffic lane slightly in front of his car. Two men got out of the car, pulled guns, told him to put his hands up, and yelled "police, police." Mr. Cook put his hands up. As those two men approached the driver's side of the car, Mr. Cook heard voices from the passenger side and saw Officer Billips standing there. Mr. Cook saw Officer Billips holding a gun.

Officer Deitz opened the driver's door, pulled Mr. Cook out of the car, threw him to the ground, and put handcuffs on him. As Officer Deitz was pulling him out of the car, Mr. Cook saw Officer Billips open the passenger door and search the glove compartment. Mr. Cook saw Officer Billips searching the center console as Officer Deitz lifted him back off the ground. Mr.

Cook heard Officer Billips yell, "I found it, I found it, I got the drugs and the gun." Mr. Cook did not see the officers recover the kilo wrapper from the City Blue bag. The cash was in Mr. Cook's pocket.

Mr. Cook had purchased a half kilogram of cocaine earlier that day, cooked the cocaine to make it into crack, and packaged the cocaine. Mr. Cook had the drugs with him throughout the day on March 10 as he went to different places in Philadelphia. Mr. Cook carried the gun to protect himself, his drugs, and his money.

5. The Court's Resolution of the Factual Dispute

It took a matter of seconds for the officers to approach the car and pull Mr. Cook out of the car. The officers saw movement on the part of Mr. Cook that reasonably gave them concern for their own safety. They had information that Mr. Cook may be armed and was carrying a large quantity of drugs. The Court does not accept Mr. Cook's testimony that he immediately put up his hands when ordered by the police to do so. Sergeant Meehan and Officer Bogan were credible in describing the movement by the defendant that caused the officers to pull him out of the car.

The Court also finds that the gun was in the defendant's waistband as stated by Sergeant Meehan and Officer

Bogan. The officers were credible on this point, and it also seems more plausible that someone who was carrying a large quantity of drugs and was about to make a drug sale had the gun in his waistband.

The Court does find that at least two of the officers had their guns drawn. Sergeant Meehan admitted that he drew his gun during the incident, and Officer Deitz did not testify. The Court accepts the defendant's testimony on this point.

The Court does not find Mr. Cook's testimony regarding Officer Billips searching the glove compartment and center console credible because it is unlikely that Mr. Cook was looking around the car and watching Officer Billips during the few seconds that it took for Officer Deitz to pull Mr. Cook out of the car. The Court finds it much more likely that Mr. Cook would be focused on Officer Deitz. In addition, the Court credits Officer Bogan's testimony that he saw Officer Billips and Sergeant Meehan recover the narcotics after Officer Deitz recovered the gun from Mr. Cook's waistband.

As the Court will discuss below, it is not necessary for the Court to find that the drugs were in plain view because the Court finds that the officers did not find the drugs until after Officer Deitz recovered the gun from Mr. Cook's waistband. The Court, therefore, declines to make a finding as to the location of the narcotics at this time.

With respect to the confidential source, the Court credits Officer Kelly's testimony that the source was lying down on the floor in the back seat of Officer Kelly's car and could not see any of the interactions between the officers and Mr. Cook.

II. Analysis

The government maintains that the officers had reasonable suspicion to make an investigatory stop of Mr. Cook based on the information from the confidential source which was corroborated to some extent when Mr. Cook arrived at the 1400 block of South 32nd Street in the white Chevy Impala at the specified time and honked his horn. The government further contends that the officers had a reasonable basis to be concerned for their own safety when they approached the car and saw Mr. Cook's movements after they ordered him to put his hands up, especially in light of the fact that the confidential source had told Officer Kelly that Mr. Cook would be carrying a gun and a large quantity of drugs. According to the government, the police, therefore, were justified in opening Mr. Cook's car door and removing Mr. Cook from the car. They were then able to seize the gun, arrest him, and search the car.

The government does not argue that the confidential source gave the police probable cause to arrest Mr. Cook. Nor,

as the Court stated above, does the government rely in any way on Officer Billips' testimony about seeing drugs on Mr. Cook's lap.

A. Reasonable Suspicion for Investigatory Stop

The Court agrees with the government's analysis. First, the Court finds that the officers possessed a sufficient degree of reasonable suspicion to justify the investigatory stop of Mr. Cook's car. The Supreme Court has recognized that an informant's tip may provide reasonable suspicion to justify an investigatory stop. Alabama v. White, 496 U.S. 325, 330 (1990).

In Alabama v. White, the police received a telephone call from an anonymous person who said that White would be leaving a specific address at a particular time in a brown Plymouth station wagon with a broken right taillight, that White would be going to a specific hotel, and that White would be in possession of an ounce and a half of cocaine inside a brown attache case. Id. at 326-27. The officers went to the address and saw a woman leave the building at the designated time and get into a vehicle that matched the tipster's description. Id. at 327. The woman was empty-handed, and the officers did not see the brown attache case. Id.

The officers followed White as she drove the route to the hotel identified by the tipster and stopped White's car when it reached the highway where the hotel was located. Id. The

officers asked White to step out of the car and obtained White's consent to search. Id. The officers found marijuana inside a brown briefcase and placed White under arrest. Id. The police later discovered cocaine inside White's purse. Id. White moved to suppress the evidence, arguing that the officers did not have reasonable suspicion under Terry to conduct an investigatory stop based on the anonymous tip. Id. at 328.

The Supreme Court decided that, under the totality of the circumstances, including both the quantity and quality of information provided by the informant, the anonymous tip exhibited sufficient indicia of reliability to justify the investigatory stop. Id. at 330-32. The Court stressed that the officers were able to corroborate many of the details provided by the tipster and that the tipster had predicted White's future behavior, not merely related facts or circumstances that might be easily known or observed by the general public. Id. at 331-32.

In so holding, the Court emphasized that the required degree of suspicion necessary to make a Terry stop is not as high as the level required to show probable cause. "Reasonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense

that reasonable suspicion can arise from information that is less reliable than that required to show probable cause." Id. at 330.

After considering the totality of the circumstances, including both the content of the information provided by the source as well as its degree of reliability, the Court finds that the police were justified in stopping Mr. Cook. Unlike the situation in Alabama, the source here was not anonymous, but rather he/she gave detailed information in a face-to-face meeting that lasted several hours. Although Officer Kelly was not personally familiar with the source, he knew that the source had provided reliable information to Officer Iezzi in the past. Further, the source stayed with Officer Kelly through the time that Mr. Cook was arrested, thereby exposing him/herself to immediate consequences if the police discovered that he/she had provided false information.

Most compelling, however, the source provided detailed information about Mr. Cook's future behavior that the police were able to corroborate. As the Supreme Court stated in Alabama, the police may reasonably believe that a person with access to information about an individual's future behavior "is likely to also have access to reliable information about that individual's illegal activities." 496 U.S. at 332.

Based on the totality of the circumstances, the Court finds that the confidential source's information, as corroborated

by the officers' personal observation and independent investigation, exhibited sufficient indicia of reliability to justify the investigatory stop of Mr. Cook's car.

Second, the Court finds that the officers approached Mr. Cook's car to conduct an investigatory stop. See Terry v. Ohio, 392 U.S. 1 (1968). Mr. Cook was not arrested until after Officer Deitz recovered the gun from Mr. Cook's waistband.

The defendant argues that the officers' conduct went beyond an investigatory stop and amounted to an illegal arrest; however, an otherwise valid stop is not necessarily converted into an arrest because the officers took precautionary measures such as boxing in the suspect's car, drawing weapons, removing the suspect from the car, or placing the suspect in handcuffs. Courts have upheld such steps when reasonably necessary to protect the officers' personal safety. See United States v. Hensley, 469 U.S. 221, 235 (1985); United States v. Edwards, 53 F.3d 616, 619-20 (3d Cir. 1995); see also Flowers v. Fiore, 359 F.3d 24, 29-30 (1st Cir. 2004); United States v. Heath, 259 F.3d 522, 530 (6th Cir. 2001); United States v. Navarrete-Barron, 192 F.3d 786, 791 (8th Cir. 1999).

The Court finds that the officers' actions, viewed collectively, did not go beyond what was reasonably necessary under the circumstances. The officers were credible in stating that they were concerned for their own safety as they approached

the car, and that concern was reasonably based. The officers had reason to believe that Mr. Cook was armed and that he was carrying a large quantity of drugs. Mr. Cook did not comply with the officers' orders to show his hands, and his movements could be reasonably interpreted as reaching for a weapon. The officers had to react swiftly to an escalating situation. The Court finds that the officers took appropriate precautions, and their actions did not transform the stop into an arrest. Once the defendant was out of the car, the officers were entitled to conduct a protective frisk for concealed weapons. See Adams v. Williams, 407 U.S. 143, 147-48 (1972); Terry, 392 U.S. at 28-29.

B. Subsequent Arrest and Search

Once the officers made the stop and recovered the gun from Mr. Cook's person, they were justified in arresting him. The police have probable cause to make a warrantless arrest when they have knowledge of sufficient facts to believe an offense has been or is being committed. United States v. Watson, 423 U.S. 411, 418 (1976).

After the officers arrested Mr. Cook, they were justified in searching the passenger compartment of his car. See New York v. Belton, 453 U.S. 454, 460-63 (1981). Thus, the Court need not make a finding that the drugs or contents of the City Blue bag were in plain view. The officers were also justified in

searching Mr. Cook's person and seizing the additional evidence. Chimel v. California, 395 U.S. 752, 763 (1969).

C. Disclosure of the Confidential Source

The Court further finds that the defendant has failed to show a sufficient reason to compel disclosure of the confidential source's identity. Neither the source's identity nor the contents of his/her communication to Officer Kelly would be helpful to Mr. Cook's defense or essential to the fair determination of the case. The confidential source was a mere tipster and did not witness or participate in the events surrounding Mr. Cook's arrest or the search of the car. Thus, the Court will not compel disclosure of the source's identity or the basis for the source's knowledge. See Roviario v. United States, 353 U.S. 53, 60-63 (1957); United States v. Jiles, 658 F.2d 194, 196-97 (3d Cir. 1981).

For the foregoing reasons, the Court denies the motion to suppress physical evidence and the request for production of materials relating to the confidential source. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
OMONDI COOK	:	NO. 04-414

ORDER

AND NOW, this 22nd day of June, 2005, upon consideration of the defendant's Motion to Suppress Physical Evidence and Request for Production of Materials Indicating the Identity and Reliability of the Confidential Source, the government's response thereto, all post-hearing submissions, and following a hearing held among the Court and counsel for the parties on May 20, 2005, and May 23, 2005, IT IS HEREBY ORDERED that said motions are DENIED for the reasons stated in a memorandum of today's date.

BY THE COURT:

/s/ Mary A. McLaughlin

MARY A. McLAUGHLIN, J.